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Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, submitted pursuant to Council resolutions 25/9 and 28/5. The final study complements the interim study of the Independent Expert (A/HRC/28/60) by focusing in more detail on the tax-related illicit financial flows: tax evasion by high net-worth individuals, commercial tax evasion through trade misinvoicing and tax avoidance by transnational corporations. In the study, the Independent Expert argues that curbing illicit financial flows and tax abuse is essential not only for realizing human rights, but also for achieving the Sustainable Development Goals, and concludes with recommendations addressed to States, international organizations and non-State actors.

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Final study by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

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I. Introduction

1. In its resolution 25/9, the Human Rights Council requested the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, to undertake a further study to analyse the negative impact of illicit financial flows on the enjoyment of human rights in the context of the post-2015 development agenda and to present an interim study to the Council at its twenty-eighth session and a final study at its thirty-first session. After presenting his interim study (A/HRC/28/60), the Council requested the Independent Expert in its resolution 28/5 to participate in the third International Conference on Financing for Development and to convene an expert meeting on funds of illicit origin with the view to include its outcome in his final study.

2. The Independent Expert welcomes the request to analyse the human rights implications of illicit financial flows, which divert resources away from activities that are critical for poverty eradication and sustainable economic and social development, as well as for realizing economic, social, cultural, civil and political rights and the right to development. Illicit financial flows also contribute to the build-up of unsustainable debt as Governments lacking domestic revenue may resort to external borrowing.

3. In May 2015, the Independent Expert provided comments on the draft outcome document of the third International Conference on Financing for Development in Addis Ababa to all member States. His interventions focused on ensuring better coherence of the outcome document with existing human rights obligations of States, with particular attention to the chapters covering illicit financial flows and foreign debt.[1]

4. Curbing illicit financial flows will be essential for realizing human rights and achieving sustainable development. The Independent Expert therefore welcomes the adoption of the outcome document of the third International Conference on Financing for Development, the Addis Ababa Action Agenda (General Assembly resolution 69/313, annex) and the Agenda 2030 for Sustainable Development (Assembly resolution 70/1). It is the first time that two key international documents recognize explicitly the detrimental effects of illicit financial flows on sustainable development. While the Millennium Development Goals had remained silent on the issue, States have now pledged to significantly reduce by 2030 illicit financial flows and strengthen the recovery and return of stolen assets (target 16.4) in the Agenda 2030. This can be considered a remarkable progress.

5. In his interim study, the Independent Expert discussed a large number of phenomena classified as illicit financial flows, including illegal tax evasion; tax avoidance by transnational corporations; bribery, corruption and concomitant asset recovery; and other criminal activities. While those activities negatively affect human rights in a number of ways, it has been estimated that the majority of all illicit financial flows are related to cross-border tax-related transactions. Curbing tax-related illicit financial flows thus has the potential to make the largest fiscal impact and would enlarge domestic resources available for the realization of human rights, including social, economic and cultural rights. The present study complements the interim study by focusing in more detail on the tax-related illicit financial flows: tax evasion by high net-worth individuals, commercial tax evasion through trade misinvoicing and tax avoidance by transnational corporations. It also explains the standing obligations of States under international law to counter these tax-related illicit financial flows.

[1] Available from www.ohchr.org/Documents/Issues/IEDebt/Paper3FFD22May2015.pdf.

6. The final study has been further developed on the basis of the inputs of the Independent Expert to the third International Conference on Financing for Development, as well as his participation in the conference and in two consultative events. On 29 October 2015, the Independent Expert convened a panel discussion on illicit financial flows, human rights and the post-2015 development agenda, on the margins of the seventieth session of the General Assembly in New York. In New Haven, Connecticut, on 30 October 2015, the Independent Expert participated in an expert meeting to discuss the study, organized in collaboration with the Yale University Global Justice Program and the organization Global Financial Integrity. The study also benefited from a background paper that was made publicly available before the consultations and from feedback received during the above-mentioned events.[2] The present study expands on certain aspects of the interim study, but should be read and considered in conjunction with it.

II. Tax abuse: definitions and estimates

7. Illicit financial flows can be defined narrowly or broadly. In their narrow sense, they refer to unrecorded financial flows involving funds that are illegally earned, transferred or utilized, for example, the profits of illegal activities, such as crime and corruption. Even if the funds originate from legitimate sources, however, their transfer abroad in violation of domestic laws, such as tax regulations, would render the capital illicit. Funds with a legitimate origin that are used for unlawful purposes, such as terrorist financing, would also be considered illicit. In their broader sense, illicit financial flows refer also to funds that, through legal loopholes and other artificial arrangements, circumvent the spirit of the law, including, for example, tax avoidance schemes used by transnational corporations.

8. The present study adopts the broad definition of illicit financial flows, covering both illegal tax evasion and legally questionable tax avoidance. While practices such as aggressive tax planning and harmful profit-shifting are frequently considered legal by domestic courts, as it is often difficult to provide sufficient evidence that highly complex tax optimization activities involving multiple jurisdictions violate national law, many such practices still give rise to legal concerns, rendering them a grey zone of compliance with national and international law.[3]

A. Tax evasion

9. As the Independent Expert discussed in his interim study, jurisdictions with high levels of financial secrecy can attract all kinds of illicit funds. Combined with low tax rates, they become ideal locations for tax-evading funds. Many important secrecy jurisdictions are home to a large private banking industry that facilitates tax evasion by high net-worth individuals in a systematic manner. Through the use of "shell" companies and other corporate vehicles, accounts can be rendered anonymous and funds can reside untaxed or minimally taxed with no means of identifying to whom they belong. It is essential to note

[2] See Esther Shubert, "Illicit financial flows, tax and human rights", background paper, 9 October 2015, available from www.ohchr.org/Documents/Issues/IEDebt/IllicitFinancialFlowsConsultation/BackgroundPaperFinal.pdf.

[3] See, for example, David Quentin, "Risk-mining the public exchequer", available from www.davidquentin.co.uk/Risk-Mining_The_Public_Exchequer.pdf.

that many of the world's most important secrecy jurisdictions are developed countries, which have historically been overlooked in their role in facilitating tax evasion.[4]

10. While not all wealth held offshore may be hidden from national tax authorities, a significant amount is believed not to be declared appropriately. Given the nature of the secrecy involved, estimating how much private wealth is hidden in tax havens is difficult and must be done indirectly. Estimates vary greatly, but in all the figures are substantial. One report estimates that $7.6 trillion (8 per cent of global financial household wealth) was held in tax havens at the end of 2013 — with an estimated 80 per cent of it unrecorded.[5] Another estimates the value of global private wealth held offshore in 2013 to be $8.9 trillion,[6] while yet another estimates that, at the end of 2010, unrecorded private wealth invested offshore was as much as $21 trillion to $32 trillion (10-15 per cent of global financial wealth). A more recent estimate is even higher: $24 trillion to $36 trillion as of 2015.[7] Those estimates provide only lower bound figures, since they include only financial wealth and disregard real assets, such as real estate, art, jewellery and gold, among others.

11. There is also consensus that the amount of private wealth held offshore is growing. It has been estimated that global offshore wealth increased by 28 per cent from end-2008 to end-2013,[8] and that unrecorded offshore private wealth grew at an average rate of 16 per cent a year from 2004 to 2014.[9] This trend is especially strong in developing countries.

12. Developed and developing countries suffer as a result, but developing countries are particularly hard hit. It has been estimated that the relative amount of wealth from developing countries held abroad is much greater than for developed countries, ranging from 20-30 per cent in many African and Latin American countries.[10] Another study provides similar figures: 26 per cent for Latin America and 33 per cent for the Middle East and Africa.[11] Moreover, developing countries tend to have much smaller tax revenues per capita than developed countries, further magnifying the impact of these losses for developing countries. The United Nations Conference on Trade and Development (UNCTAD) has calculated that the tax gap for developing countries is $66 billion to $84 billion per year — about two thirds of total official development assistance (ODA).[12] These revenues become lost from the erosion of the tax base, thus preventing Governments, particularly in developing countries, from establishing progressive tax systems.

13. Another crucial fact to note is the greatly unequal ownership of offshore wealth. It has been estimated that 85 to 90 per cent of wealth belongs to fewer than 10 million people — just 0.014 per cent of the world's population —, and at least a third of it belongs to the world's top 100,000 families, each with a net worth of at least $30 million.[13] Another study has found that, while offshore assets are rising, the number of clients is falling, so the

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[4] See, for example, the Tax Justice Network Financial Secrecy Index, available from www.financialsecrecyindex.com/.

[5] See G. Zucman, "Taxing across borders: tracking personal wealth and corporate profits", *Journal of Economic Perspectives*, vol. 28, No. 4, pp. 121-148.

[6] See Boston Consulting Group, "Global wealth 2014: riding a wave of growth" (2014).

[7] See J. Henry, "The price of offshore revisited", Tax Justice Network (2012); and "Let's tax anonymous wealth!", *Global Tax Fairness*, Ed. T. Pogge and K. Mehta (Oxford University Press, Oxford, forthcoming).

[8] See Zucman, "Taxing across borders" (footnote 6).

[9] See Henry, "Let's tax anonymous wealth!" (footnote 8).

[10] See Zucman, "Taxing across borders" (footnote 6).

[11] See Boston Consulting Group, "Global wealth 2013: maintaining momentum in a complex world", (2013).

[12] See *Trade and Development Report*, (United Nations publication, Sales No. E.14.II.D.4) p.175.

[13] See Henry, "Let's tax anonymous wealth!" (footnote 8).

average wealth per client is growing.[14] This means that the global reduction in tax revenues accrues almost entirely to the wealthiest. In this way, moving funds abroad to facilitate tax evasion promotes and perpetuates wealth inequality.

14. A common commercial tax-evading practice is trade misinvoicing. This involves falsifying trade documents, such as customs forms. By underinvoicing exports and overinvoicing imports, tax evaders can move assets out of countries and into secret bank accounts and shell companies in tax havens.

15. According to Global Financial Integrity, trade misinvoicing is the most common way of illicitly moving funds out of developing countries. The organization has estimated that trade misinvoicing accounted for more than 80 per cent of all illicit outflows between 2004 and 2013 — an average $655 billion per year — and that it roughly doubled in magnitude over this time period.[15] An analysis by the organization shows that in 7 out of the past 10 years, the global volume of illicit financial outflows from developing countries — of which trade misinvoicing constitutes the vast majority — was greater than the combined value of all ODA and foreign direct investment (FDI) flowing into poor nations.[16]

16. Importantly, these estimates are thought to be conservative since they account for only one type of trade misinvoicing, known as "re-invoicing," which occurs when goods are exported under one invoice, the invoice is then sent to another jurisdiction, such as a tax haven, where the price is altered, and finally, the revised invoice is sent to the importing country for clearing and payment. They do not account for misinvoicing on trade of services and intangibles — approximately 20 per cent of world trade —, nor does it capture "same invoice faking," where misinvoicing occurs within the same invoice as agreed between exporters and importers. A study by Global Financial Integrity has found that tax revenue losses to developing countries due to re-invoicing alone amounted to $98 billion to $106 billion per year between 2002 and 2006.[17]

B. Tax avoidance

17. While tax evasion, which breaks national tax laws, is openly illegal, a number of corporate tax avoidance schemes use very complex methods to make it very difficult for tax authorities to provide sufficient proof that they are in contravention of national laws and regulations. The overall effect of those practices is to reduce the corporate tax base of many countries in a way not intended by domestic policy. In addition, tax avoidance by transnational corporations harms society by avoiding a "fair share" of the tax burden.

18. A common method of corporate tax avoidance is "profit-shifting", where transnational corporations take advantage of tax rate differentials across jurisdictions and shift taxable income and assets away from source countries, where economic activity takes place, and into associated companies in tax havens, sometimes with no real staff or business activities.

19. Like tax evasion, tax avoidance results in tax revenue losses for both developed and developing countries. UNCTAD has estimated tax revenue losses to developing countries

[14] See Zucman, "Taxing across borders" (footnote 6).

[15] See D. Kar and J. Spanjers, "Illicit financial flows from developing countries: 2004-2013", Global Financial Integrity, p. 1 and 10 (2015).

[16] Ibid.

[17] See A. Hollingshead, "The implied tax revenue loss from trade mispricing", Global Financial Integrity, p. 1 (2010).

of $100 billion annually, which represents about one third of corporate income taxes that would be due in the absence of profit-shifting. Total development resource leakages, including lost earnings from missed reinvestment opportunities in addition to tax revenue losses, are an estimated $250 billion to $300 billion per year. These estimates are likely to be lower bound figures, since they do not cover all forms of corporate tax avoidance.[18] A recent study by the International Monetary Fund (IMF) estimates long-run annual revenue losses to developing countries of $200 billion per year (1.7 per cent of gross domestic product (GDP)) and to countries of the Organization for Economic Cooperation and Development (OECD) of $500 billion per year (0.6 per cent of GDP).[19] Looking specifically at the United States of America, one report estimates losses due to profit-shifting by United States firms to be $100 billion per year, while another calculates a decline in the effective tax rate on United States firms from 30-20 per cent over the past 15 years, two thirds of which is attributable to profit-shifting.[20] These losses are borne by both the Government of the United States and the Governments of other countries, while the benefits accrue to shareholders of the respective companies. Since equity ownership is very concentrated, so too, therefore, are these benefits. Similar trends can also be observed in other developed countries.

20. Corporate tax avoidance causes additional problems beyond lost revenue. The preceding suggests that corporate tax avoidance perpetuates inequality since the benefits accrue to a small minority while revenue losses will need to be made up by the rest of the population. Moreover, in developing countries, it decreases the competitiveness of domestic businesses since, unlike transnational corporations, they generally cannot take advantage of cross-border tax haven transactions in order to minimize their tax bill.[21] Tax avoidance also wastefully increases the cost tax administration.[22] Furthermore, the more sophisticated tax avoidance schemes become, the more ineffective capacity-building efforts to strengthen tax administrations become. This suggests that, while capacity-building efforts are important to help combat tax avoidance in the short term, what is needed more fundamentally is a change in the rules themselves.

III. Tax abuse, human rights and sustainable development

21. The Independent Expert notes in his interim study that there are various connections between illicit financial flows and human rights. Many of these also apply specifically to tax abuse. First and foremost, tax abuse deprives Governments of resources required to progressively realize human rights, including economic, social and cultural rights, such as health, education, social protection, water, sanitation, as well as civil and political rights, including access to justice, free and fair elections, freedom of expression and personal security. Tax abuse can also undermine the rule of law, for example, when large-scale tax evasion is allowed to occur with impunity. In addition, whistle-blowers, media outlets and human rights defenders that expose tax abuse require effective protection based on international human rights law and the United Nations Convention against Corruption. Human rights and due process guarantees are also essential to protect persons from undue

[18] See A. Cobham, "UNCTAD study on corporate tax in developing countries", *Unacounted.org* (2015).

[19] E. Crivelli, R. De Mooij and M. Keen, "Base erosion, profit shifting and developing countries", IMF working paper No. WP/15/118, pp. 19-20 (2015).

[20] See J. Gravelle, "Tax havens: international tax avoidance and evasion", Congressional Research Service (2015); and Zucman, "Taxing across borders" (footnote 6).

[21] See ActionAid, "How tax havens plunder the poor", p. 6 (2013).

[22] See Declaration of the Independent Commission for the Reform of International Corporate Taxation, p. 9, available from www.icrict.org/declaration/.

allegations, undue removal from office, criminalization, freezing or confiscation of assets or arbitrary deprivation of property or detention (see A/HRC/28/60, para. 22).

22. It is also worth emphasizing the connections between tax abuse and the principle of equality and non-discrimination contained in international human rights law, economic inequality and sustainable development.

A. Equality and non-discrimination

23. The principles of equality and non-discrimination are enshrined in all core international human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. Under article 2 of the International Covenant on Economic, Social and Cultural Rights, each State Party is required to ensure that the rights enshrined in the Covenant are guaranteed to all individuals under its jurisdiction without discrimination. In general comment No. 20 (E/C.12/GC/20), the Committee on Economic, Social and Cultural Rights elaborates that "[n]on-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights" and "[t]he principles of non-discrimination and equality are recognized throughout the Covenant".

24. Tax abuse by corporations and high net-worth individuals forces Governments to raise revenue from other sources, including through regressive taxes, the burden of which falls hardest on the poor (see A/HRC/26/28, para. 60). This has important human rights implications because regressive tax structures limit the redistributive impact of social programmes since they effectively end up being funded by the very people they are supposed to benefit. The need to make up revenue shortfalls through regressive taxes thus further undermines the realization of economic and social rights for the most vulnerable.

25. This has further implications for gender equality. When low-income households face deteriorating public services, many women and girls are forced to take on the additional costs of unpaid care needs. Moreover, tax systems themselves are not gender neutral and regressive taxes, such as consumption taxes, tend to disproportionately fall on women (see A/HRC/26/28, para. 46). In both cases, regressive taxes and their effects threaten to undermine substantive equality for women.

26. Finally, high levels of tax abuse undermine the principle of equality and non-discrimination, given that evaders end up paying less than taxpayers with the same, or less, capacity to pay (see A/HRC/28/60, para. 26 and A/HRC/26/28, para. 60).

B. Economic inequality

27. In addition, tax abuse perpetuates and exacerbates extreme economic inequality, benefiting the rich at the expense of the poor. While human rights law does not necessarily imply a perfectly equal distribution of income and wealth, it does require that resources in a society are distributed such that individuals are guaranteed equal enjoyment of their basic

rights without discriminatory outcomes.[23] When economic inequality results in such discriminatory outcomes, it becomes a human rights issue.

28. Global inequality currently stands at extremely high levels. The United Nations Development Programme (UNDP) reports that the richest 8 per cent of the world's population earn half of its total income, leaving the other half for the remaining 92 per cent.[24] Oxfam has shown that, in 2014, the richest 1 per cent of people in the world owned 48 per cent of global wealth — up from 44 per cent in 2010 —, leaving 52 per cent of global wealth to the remaining 99 per cent of the world's population. Oxfam predicts that, by 2016, half of global wealth will be concentrated among the top 80 individuals. Over the past two decades, income inequality has increased by 9 per cent in developed countries and 11 per cent in developing countries.[25] The Independent Expert shares the sentiment of the Special Rapporteur on extreme poverty and human rights, Philip Alston, who recently denounced such extreme inequality, calling it a "cause for shame".[26]

29. Extreme economic inequality threatens to undermine human rights. For example, income inequality prevents millions of individuals from enjoying social and economic rights on a non-discriminatory basis, such as access to adequate housing, food, health care and sanitation. This is particularly true if such inequality is not addressed by policies ensuring access to these rights, for example, through social welfare and protection. UNDP has calculated that, in 2012, 23 percentage points in the Human Development Index were lost owing to inequality. This can also result in negative feedback effects: a weakened tax base leads to poor social services and unequal treatment, which leads to the erosion of trust in government and to low taxpayer morale, which further weakens the tax base. It can also threaten the right to political participation, since outsize political influence by the rich can undermine democratic processes. Moreover, reminders of sharp differences in wealth can influence the way people view themselves and others, and can threaten the equal participation of citizens in political and public life.[27]

30. The Independent Expert welcomes the call from Special Rapporteur on extreme poverty for the Human Rights Council to recognize explicitly that there are limits to the levels of inequality that can be considered compatible with respect for human rights, and for States to make formal commitments to reducing extreme inequality.[28]

C. Relationship with sustainable development goals

31. Curbing tax abuse and illicit financial flows is not only essential for realizing human rights, but also for achieving sustainable development. Making progress on target 16.4 of the Sustainable Development Goals on reducing illicit financial flows will make an important contribution not only to achieve various other goals included in the Agenda 2030 for Sustainable Development, but also to the enjoyment of human rights.

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[23] R. Balakrishnan, J. Heintz and D. Elson, "What does inequality have to do with human rights?", Political Economy Research Institute, Working Paper Series No. 392 (2015); see also the annual report of the Independent Expert (A/HRC/31/60).

[24] See UNDP, *Humanity Divided: Confronting Inequality in Developing Countries*, p. xi (New York, 2013).

[25] See "Wealth: having it all and wanting more", Oxfam issue briefing, pp. 2, 3 and 7 (2015).

[26] See the report of the Special Rapporteur on extreme poverty and human rights (A/HRC/29/31) and his oral statement from 22 June 2015 to the Human Rights Council, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16131&LangID=E.

[27] See UNDP, *Humanity Divided*, pp. xi, 1 and 5-6 (footnote 26).

[28] See oral statement by the Special Rapporteur on extreme poverty and human rights (footnote 27).

32. While States have assumed binding human rights obligations going beyond their commitments to implement the Sustainable Development Goals, the Agenda 2030 for Sustainable Development is grounded in the Universal Declaration of Human Rights and international human rights treaties.[29] In some respects, the Agenda 2030 converges with obligations of States to progressively realize various economic, social and cultural rights. For example, the commitments to eradicate poverty (Goal 1), to end hunger and achieve food security and improved nutrition (Goal 2), to ensure healthy lives (Goal 3), to provide inclusive and equitable education (Goal 4), to ensure the availability of water and sanitation for all (Goal 6) and to promote full and productive employment and decent work for all (Goal 8) can contribute to the realization of the rights contained in the International Covenant on Economic, Social and Cultural Rights and other human rights treaties. Curbing illicit financial flows will also, as discussed above, help to reduce inequality within and between nations (Goal 10) and make a contribution to combating substantive discrimination. Curtailing illicit financial flows should therefore be seen not only as a target in its own right, but also as an important means for making progress on many of the other targets in the Agenda 2030.

33. A recent study by Global Financial Integrity has compared illicit financial outflows from the world's poorest economies to numerous traditional development indicators, including GDP, ODA and FDI, public expenditure on health and education and total tax revenues. The results of the study highlight the strong correlation between illicit financial flows and lower levels of development. For example, Global Financial Integrity estimates that 31 developing countries had illicit financial outflows greater than their public spending on health during the period 2008-2012 and, in 35 developing nations, illicit financial outflows outnumbered public spending on education during the same period. In 12 countries, illicit outflows were estimated to surpass total tax revenues. Finally, for 20 developing nations, illicit outflows outnumbered the combined financial inflow in the form of ODA and FDI during that period.[30] Such figures suggest that achieving the Sustainable Development Goals will be an immense uphill battle in the face of illicit financial flows.

34. The study by Global Financial Integrity also found that illicit financial flows correlate with lower levels of human development as measured by the Human Development Index, and with higher levels of poverty and economic inequality.[31]

35. Illicit financial flows will also pose a serious challenge to meeting target 17.4 of the Sustainable Development Goals, on debt sustainability. They can contribute to the build-up of debt crises since, in the face of missing revenues, some Governments must resort to external borrowing. Reducing illicit financial flows should therefore be seen as an important element in the fight against unsustainable debt. However, debt crises can aggravate illicit financial flows since high debt servicing expenses will reduce the amount of public resources available for other purposes, including combatting illicit financial flows. Progress made toward target 17.4 could therefore have positive impacts on the achievement of target 16.4, on illicit financial flows.

36. Finally, given that one of their most immediate consequences is the loss of tax revenue, illicit financial flows, and especially tax-related illicit financial flows, are clearly contrary to target 17.1 of the Sustainable Development Goals, on strengthening domestic resource mobilization, including through capacity-building for developing countries. In order to genuinely strengthen domestic resource mobilization, it will be necessary not only

[29] See General Assembly resolution 70/1, para. 10.

[30] See J. Spanjers and H. Foss, "Illicit financial flows and development indices: 2008-2012", Global Financial Integrity, pp. 30-33 (2015).

[31] Ibid, pp. 18-22.

to build capacity to help developing countries respond to the problems of tax abuse, but also to address the underlying, systematic causes of tax abuse and the policies and regulations that make it possible in the first place. It is important to recall here that raising tax revenue is not an end in itself, but rather a tool for development and the fulfilment of human rights. Governments that face difficulties in trying to address illicit financial flows must still ensure that tax systems are progressive and do not increase inequalities.

IV. Human rights obligations and tax abuse

37. As discussed by both the former Independent Expert on foreign debt, Cephas Lumina, and the former Special Rapporteur on extreme poverty, Magdalena Sepúlveda Carmona, international human rights instruments provide certain legal obligations that should guide the response to the problem of tax abuse.[32]

A. Maximum available resources

38. Under article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, each State Party "undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized ... by all appropriate means, including particularly the adoption of legislative measures".

39. Part of the abovementioned obligation is the requirement to secure and devote the maximum available resources for the progressive realization of human rights. That means not only that Governments must use existing resources effectively, but also that, when necessary, they must increase revenue in equitable and non-regressive ways.[33] Moreover, as elaborated by the Committee on Economic, Social and Cultural Rights, each State party has an immediate obligation to ensure the satisfaction of, at the very least, minimum essential levels of all economic, social and cultural rights, and must demonstrate that every effort has been made to use all the resources at its disposal, to satisfy as a matter of priority those minimum obligations.[34] In other words, Governments that enact austerity measures without first looking out for any other way to raise revenue might not be acting in accordance with the Covenant, if such measures are regressive, result in discriminatory outcomes or deprive people of gaining access to minimum essential levels of rights. As the Special Rapporteur on extreme poverty argues, that includes resources that could potentially be collected through taxation, or tackling tax evasion and other illicit financial flows (see A/HRC/26/28, para. 27).

B. International assistance and cooperation

40. The obligation of States to provide international assistance and cooperation is enshrined in article 2 (1) of the International Covenant on Economic, Social and Cultural

[32] See A/HRC/22/42, A/HRC/25/52 and A/HRC/26/28.

[33] See R. Balakrishnan et al, *Maximum Available Resources and Human Rights*, Center for Women's Global Leadership (Rutgers University, New Brunswick, New Jersey, 2011).

[34] See Committee on Economic, Social and Cultural Rights, general comment No. 3 on the nature of States parties' obligations, para. 10.; and statement of the Committee on Economic, Social And Cultural Rights, (E/C.12/2007/1).

Rights.[35] According to the Committee on Economic, Social and Cultural Rights, the phrase "to the maximum of its available resources" refers both to resources existing within a State and those available from the international community through international cooperation and assistance.[36] The duty of States to make every effort to satisfy economic, social and cultural rights therefore includes an obligation to actively seek assistance through international cooperation.[37]

41. As the Special Rapporteur on extreme poverty explains, States have a corresponding duty "to provide international assistance and cooperation, commensurate with their capacities, resources and influence ... on the basis of the recognition that some countries will not be able to achieve the full realization of economic, social and cultural rights if other countries in a position to assist do not do so".[38]

42. While the Covenant refers in particular to economic and technical assistance and cooperation, international assistance may comprise other measures, including provision of information to people in other countries or cooperation with their State, for example, to trace stolen public funds.[39] This interpretation could be easily extended to apply to assistance in tackling tax evasion. Indeed, tax information exchange — a key measure for international tax cooperation — is becoming the new global standard and has been repeatedly emphasized throughout the Sustainable Development Goals process, including most recently in the Addis Ababa Action Agenda.

43. In our globalized world, policies implemented in one country can have impacts in other countries. This includes taxation policies, which can undermine the enjoyment of human rights abroad. International law requires that States should refrain from conduct that harms the enjoyment of human rights outside their own territory.[40] The duty to respect human rights requires that States not interfere or deliberately undermine efforts by other States to realize social, economic and cultural rights. Reaffirming principles of the Covenant and international law, the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights state, for example, that all States "have the obligation to refrain from conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories" (Principle 20); and "must refrain from any conduct which ... impairs the ability of another State or international organization to comply with that State's or that international organization's obligations as regards economic, social and cultural rights" (Principle 21).

44. Following this line of reasoning, the International Bar Association on tax abuse, poverty and human rights released a report in which it argued that actions of States "that encourage or facilitate tax abuses, or that deliberately frustrate the efforts of other States to counter tax abuses, could constitute a violation of their international human rights obligations, particularly with respect to economic, social and cultural rights".[41] This concern was shared by the Independent Expert in his interim study, by the former

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[35] See Articles 55 and 56 of the Charter of the United Nations, article 4 of the Convention on the Rights of the Child and article 32 of the Convention on the Rights of Persons with Disabilities.

[36] See E/C.12/2007/1, para. 5.

[37] See A/HRC/26/28, para. 26.

[38] Ibid, paras. 29-32.

[39] O. De Schutter et al "Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights", *Human Rights Quarterly*, No. 34, p. 1157 (2012).

[40] See, for example, Articles 55 and 56 of the Charter of the United Nations, and the Draft Articles on the Responsibility of States for internationally wrongful acts (A/56/10).

[41] See S. Cohen et al, *Tax Abuses, Poverty and Human Rights*, International Bar Association, p. 2 (London 2013).

Independent Expert on foreign debt and by the former Special Rapporteur on extreme poverty.[42]

45. By reducing government revenue, tax abuse critically undermines the ability of many countries, especially the world's poorest countries, to fulfil economic, social and cultural rights. Poor countries have much smaller tax revenue bases than developed countries, due to having smaller per capita GDPs, as well as the fact that they raise a much smaller proportion of their gross GDP as government revenue.[43] As a result, many of these countries are dependent on external aid. For example, according to a UNDP report, in 2009 the least developed countries received approximately 24.1 per cent of total ODA, yet at the same time it has been estimated that as a group they lost 60 cents off every dollar of ODA to illicit financial flows. For some of these countries, illicit outflows were several times greater than the amount of ODA received. The report also found that illicit outflows averaged 4.8 per cent of the GDP of least developed countries, a large proportion of already vulnerable economies.[44]

46. A recent study by Global Financial Integrity also confirms that illicit financial flows have an outsize impact on the worst-off developing countries, including least developed countries and heavily indebted poor countries. The organization found that, of 82 developing countries studied, 20 per cent have illicit outflows greater than their ODA and FDI combined; for close to 25 per cent of countries, the ratio of illicit outflows to GDP is 10 per cent or greater; and, for 40 per cent of countries, the ratio of illicit outflows to total trade value was 10 per cent or greater. The study also shows that there is a strong connection between high levels of illicit outflows and the poverty gap (the number of people living below the poverty line), and an inverse relationship between high levels of illicit outflows and a country's ranking on the Human Development Index.[45]

47. Next to government revenue losses, tax abuse also strains the capacity of Governments that have the fewest resources to spare. The High-level Panel on Illicit Financial Flows from Africa has explained that finding the resources required to tackle tax abuse is difficult for many African Governments, even though they would pay off in the long run, since in the meantime they compete with other priorities for resource-strained Governments.[46]

48. It is also important to remember that tax abuse is problematic from a human rights perspective not only in terms of resources for fulfilling socioeconomic rights, but also because of its effects on governance and political institutions. High-profile tax abuse by the elite can lead to low tax morals and widespread non-compliance. It also undermines the legitimacy of the Government and the rule of law, while illicit funds and wealth concentrated in the hands of a small elite can increase the risk of regulatory capture and undermine the ability of the public to participate in political processes.

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[42] See A/HRC/28/60, para. 24; A/HRC/25/52, para. 25; and A/HRC/26/28, paras. 30-32, 61-62 and 74-77.

[43] See T. Pogge, "Illicit financial outflows as a drag on human rights realization in developing countries", in "Illicit Financial Flows: The Most Damaging Economic Condition Facing the Developing World", Global Financial Integrity, pp.15-16 (2015).

[44] See "Illicit financial flows from the least developed countries: 1990-2008", UNDP, pp. 3 and 16 (New York, 2011).

[45] See Spanjers and Foss, "Illicit financial flows" pp. vii-ix (footnote 31).

[46] See "Illicit financial flows", Report of the High-Level Panel on Illicit Financial Flows from Africa, p. 59, available from www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf.

49. Some critics have argued that having legislation favourable to the offshoring of private wealth is part of a jurisdiction's right to self-determination or sovereignty. The Independent Expert shares the view of the commission established by the Government of Norway to investigate capital flight from developing countries, that States do not have an unlimited license to pursue their own self-interest at any cost; indeed, the primary constraint on State sovereignty is that domestic policies should not undermine the sovereignty of another State. "Legislation that exclusively or primarily will have effects in other States, such as the financial regulations common to secrecy jurisdictions, is therefore not the exercise of sovereignty, but an encroachment on the sovereignty of others".[47]

C. Use of funds

50. It is important to emphasize that, since curtailing tax abuse would surely increase the fiscal space of Governments, these greater tax revenues must be spent with due respect for international human rights obligations. While human rights law gives States a lot of discretion to follow their own economic policies, there are certain limits. For example, States have to ensure that all persons enjoy at least minimum essential levels of satisfaction of each social, economic and cultural right. Furthermore, they have to devote maximum available resources to the progressive realization of social, economic and cultural rights. In addition, all rights need to be realized in a non-discriminatory manner. Human rights obligations in the economic and social sphere therefore demand some prioritization of public spending, including that public resources are used to ensure that marginalized groups enjoy the rights enumerated in the International Covenant on Economic, Social and Cultural rights and other human rights treaties, without discrimination.

51. This reasoning holds not only for the use of additional tax revenues. While illicit financial outflows may pose constraints on States to realize economic, social and cultural rights, that does not excuse budget allocations based on existing public revenues that would be in contradiction to the above mentioned principles.

52. Furthermore, it is the view of the Independent Expert that respect for and adherence to the human rights principles of transparency, accountability and participation is a critical factor in ensuring the prudent use of public funds.

D. Responsibilities of non-State actors

53. As the Independent Expert discussed in his interim study, tax abuse, and illicit financial flows more generally, is not a human rights concern for States alone. While States have the primary duty to respect, protect and fulfil human rights, Principle 13 (a) of the Guiding Principles on Business and Human Rights requires that business "[a]void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur".[48]

54. The present study has already discussed how many transnational corporations employ aggressive tax planning strategies that amount to tax abuse. When it comes to tax evasion, financial institutions are also a key actor — including some of the world's largest and best-known banks. For the period 1998-2014, one author identified 845 cases in which

[47] See Commission on Capital Flight from Poor Countries, *Tax Havens and Development*, p. 145 (Government of Norway, Oslo, 2009).

[48] See Office of the United Nations High Commissioner for Human Rights, "Guiding principles on business and human rights" (New York and Geneva, 2011).

individual financial institutions received specific declared penalties and assessments for a host of infractions, the most widespread of which was helping wealthy clients and corporations engage in tax fraud. Moreover, it was found that a small handful of banks were responsible for a majority of those infractions: looking at the top 14 kinds of infractions, the top 22 banks were penalized a combined 655 times and the top 10 offenders account for more than half of these.[49]

55. The study calculated that the banks had paid a combined $11 billion in fines for facilitating tax evasion. However, those penalties, and those for other financial crimes, were only a modest share of their total assets. Moreover, of the cases reviewed, in only one — a tax evasion case — did a major bank ever plead guilty to a corporate felony. Even so, the bank in question did not have its license revoked; indeed, the plea deal was arranged so that this would not happen. There is furthermore a sense of impunity in relation to the conduct of senior bankers with respect to the financial crimes of their institutions.

56. Financial institutions that facilitate tax evasion and transnational corporations that employ aggressive tax planning strategies must recognize that their actions may have negative human rights impacts. They can demonstrate respect for human rights through appropriate policies and due diligence procedures, through country-by-country reporting, including publishing information about the taxes they pay to each country in which they operate. Similarly, the professionals that make up the tax planning industry, such as lawyers, accountants, bankers and wealth managers, must take responsibility for their contributions to the harms caused by tax abuse.

57. While businesses have human rights responsibilities and must follow domestic law, States have the duty to ensure that businesses operating in their territory do not abuse human rights. According to the Guiding Principles on Business and Human Rights, States (a) must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises; this requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication; and (b) should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. A similar obligation can be found in principles 24 and 27 of the Maastricht Principles.

58. These requirements are relevant for addressing tax evasion facilitated by financial institutions and tax avoidance by transnational corporations. Governments must ensure that such organizations cease to be involved in those activities, which are detrimental to the full realization of human rights. Imposing sanctions and penalties on businesses for tax abuse might thus also form part to ensure human rights compliance. Furthermore, human rights impacts related to corporate tax abuse should also be considered in national action plans on business and human rights.

V. Recent international initiatives to curb illicit financial flows

59. In his interim study, the Independent Expert reviews a number of international initiatives to curb illicit financial flows. The Independent Expert wishes to draw attention here to a number of recent developments, updating the information contained in the interim study.

[49] See Henry, "Let's tax anonymous wealth!" (footnote 8).

High-level panel on illicit financial flows from Africa

60. The African Union and the Economic Commission for Africa established the High-level Panel on Illicit Financial Flows in February 2012 to address the debilitating problem of illicit financial outflows from Africa. The Panel carried out consultations, country visits and studies in six African countries to inform its report, which was launched in Addis Ababa on 1 February 2015. In the report, the Panel argues that illicit financial flows are a potential source of domestic resource mobilization for the continent that, if tapped, could have positive impacts in terms of development, reducing aid dependence and governance. The report ends with a series of policy recommendations, both for African countries and other actors.

Addis Ababa Action Agenda

61. The third International Conference on Financing for Development, held in Addis Ababa from 13-16 July 2015, adopted on its last day the Addis Ababa Action Agenda. The Agenda states that measures to curb illicit financial flows will be integral for achieving sustainable development (para. 18) and devotes a significant portion of its discussion of domestic public resources to combatting tax abuse. In paragraph 23 of the Addis Ababa Action Agenda, States made the following important commitments:

> We will redouble efforts to substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption through strengthened national regulation and increased international cooperation. We will also reduce opportunities for tax avoidance, and consider inserting anti-abuse clauses in all tax treaties. We will enhance disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies to relevant tax authorities. We will make sure that all companies, including multinationals, pay taxes to the Governments of countries where economic activity occurs and value is created, in accordance with national and international laws and policies.

62. Furthermore, in paragraph 25 of the Addis Ababa Action Agenda, States committed themselves to strive to eliminate safe havens that create incentives for transfer abroad of stolen assets and illicit financial flows and to strengthen regulatory frameworks at all levels, to further increase transparency and accountability of financial institutions, the corporate sector and public administrations.

63. The Independent Expert welcomes many elements of the Addis Ababa Action Agenda, including its explicit call to respect human rights and the specific attention it gives to tax abuse, including both tax evasion and avoidance. However, several concerns raised by the Independent Expert during the preparatory process of the Conference were ultimately not addressed in the final outcome document. He worried, for example, about the vagueness of the commitments to "substantially reduce" and "eventually eliminate" illicit financial flows, and recommended that a more measurable target with a specific deadline be included.[50] He also argued that, to fully do justice to the human rights concerns raised by tax abuse, more explicit references to tackling secrecy jurisdictions, strengthening bank oversight and ensuring that financial service providers exercise due diligence would be needed. Yet the final language adopted remains weak, as it is unclear what counts as a "safe haven" and what exactly States and financial institutions must do in order to reduce the

[50] See comments by the Independent Expert of 26 May 2015, available from www.ohchr.org/Documents/Issues/IEDebt/Paper3FFD22May2015.pdf.

incentives for tax abuse. Similarly, it is unclear how regulative frameworks must be strengthened to increase the transparency and accountability of financial institutions.[51] Concrete proposals are crucial to ensuring that progress in curbing tax abuse can be made.

Tax Inspectors Without Borders

64. The third International Conference on Financing for Development also saw the launch of Tax Inspectors Without Borders, an OECD/UNDP joint initiative to help developing counties bolster domestic revenues by strengthening their tax audit capacities. The programme will facilitate the transfer of tax audit knowledge and skills by matching tax audit experts with local officials to work directly on current audits concerning international issues, and to share general audit practices. The initiative was welcomed by stakeholders from business and civil society, as well as OECD and developing countries in Addis Ababa.[52] While the provision of technical assistance to developing countries is welcome and necessary, adequate care needs to be taken to avoid conflicts of interest. For example, there have been concerns that some tax experts providing advice have previously assisted transnational corporations in negotiating problematic advance pricing agreements for them or assisted them in other ways to avoid tax payments.

2030 Agenda for Sustainable Development

65. At the United Nations summit for the adoption of the post-2015 development agenda, held in New York on 25-27 September 2015, Member States adopted 17 Sustainable Development Goals, including two targets particularly relevant to illicit financial flows. Target 16.4 of the Goals commits States to "significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime" by 2030. Under target 17.1, States agreed to strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection. The outcome document of the United Nations summit for the adoption of the post-2015 development agenda (General Assembly resolution 70/1, annex), also mentions that the full implementation of the Addis Ababa Action Agenda is critical for the realization of the Sustainable Development Goals and targets.

66. There were no similar commitments relating to illicit financial flows and support for domestic revenue generation in the Millennium Development Goals, including Goal 8 on global partnership for development, covering foreign debt, trade and development cooperation. The Independent Expert therefore welcomes the inclusion of these targets on illicit financial flows into the Sustainable Development Goals.

Organization for Economic Cooperation and Development projects on automatic exchange of tax information and base erosion and profit-shifting

67. In response to public outcry over tax evasion and corporate tax avoidance, the Group of Eight countries made a commitment at its 39th summit, in June 2013, to introduce automatic exchange of information by tax authorities across the world in order to fight the scourge of tax evasion; to change rules that let companies shift their profits across borders to avoid taxes; to assist developing countries with information and capacity to collect taxes

[51] See J.P. Bohoslavsky, "Why the Addis debt chapter falls short", *The Road to Addis and Beyond: Financing for Social Development*, United Nations Research Institute for Social Development (2015).

[52] See www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/07/13/tax-inspectors-without-borders-oecd-and-undp-to-work-with-developing-countries-to-make-tax-audits-more-effective.html.

owed to them; to introduce public country-by-country reporting for extractive companies; and to address the issue of misuse of shell companies to facilitate illicit financial flows.[53]

68. In July 2014, OECD and the Group of 20 published a new global standard for automatic exchange of tax information, providing for the exchange of non-resident financial account information with the tax authorities in the account holder's country of residence. As at 30 October 2015, 96 countries had committed themselves to implementing the standard to automatically exchange tax information by end of 2018.[54]

69. OECD was also tasked by the Group of Eight and Group of 20 Finance Ministers with developing an Action Plan on Base Erosion and Profit-Shifting, published in July 2013, containing 15 specific actions to address a range of issues relating to tax transparency, accountability and information exchange. The final package of reforms was endorsed by the Group of 20 Finance Ministers in Lima on 8 October 2015, and subsequently presented to the Group of 20 leaders during their summit in Antalya, Turkey, on 15 and 16 November 2015. The leaders called on OECD to develop a framework for monitoring the implementation of the base erosion and profit-shifting project by 2016 and to encourage all countries and jurisdictions, including developing countries, to participate in it. While that project includes country-by-country reporting by transnational corporations as one of its action points, it requires that this information be provided only to the home tax authority of those corporations and not that it be made publicly available. Other countries will likely be able to access that information only through official treaty requests, which will make it more difficult for developing country tax authorities to access the information and will prevent public scrutiny.

Independent Commission for the Reform of International Corporate Taxation

70. The Independent Commission for the Reform of International Corporate Taxation is a group of leaders from around the world that aims to promote the reform of the international corporate tax system. The Commission met in New York on 18 and 19 March 2015 and launched its Declaration[55] in Trento, Italy, in June 2015. In its preamble, the Declaration states:

> With the conviction that our system of taxing the global profits of transnational corporations is broken and that the rules and institutions governing the international corporate tax system must change, we have formed an Independent Commission for the Reform of International Corporate Taxation. As a Commission, we have concluded that proposals to reform the current system are clearly insufficient, and the institutions promoting international tax cooperation are not inclusive enough.

The Declaration provides 34 reform proposals in six different areas "to ensure the creation of an international tax system that works for all people." One of its key recommendations is to tax transnational corporations conducting business activities across international borders with subsidiaries in different jurisdictions as single firms.

[53] See www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements.

[54] See www.oecd.org/newsroom/global-forum-on-tax-transparency-pushes-forward-international-co-operation-against-tax-evasion.htm.

[55] Available from www.icrict.org/declaration/.

VI. Achieving the Sustainable Development Goals

71. In the view of the Independent Expert, implementing the Sustainable Development Goals target on illicit financial flows will be a challenge. First, it is only one of 169 targets included in the Agenda 2030 for Sustainable Development. Second, there are many actors with different and sometimes conflicting interests who need to work together in order to make progress on this particular target. The more actors there are, the greater the risk of diffusion of responsibility for implementation, if it is not clearly spelled out who should do what and when.

72. This raises the question of accountability for implementing the Sustainable Development Goals and monitoring their implementation. So far, it is largely left to States to honour their commitments. But commitments are not likely to be honoured if one cannot point at responsibility for specific action and if there is no public pressure to take action. Hence, the need for a rigorous and independent monitoring mechanism.

73. In this context, it will also be essential to track progress on reducing illicit financial flows through appropriate indicators. The United Nations Inter-Agency and Expert Group on Sustainable Development Goal Indicators is currently developing such indicators but, as at December 2015, consensus had not been reached as to how to measure progress in reducing illicit financial flows, which will require agreeing on a common method for estimating illicit financial flows under the Sustainable Development Goals framework. To maintain accountability, it will be necessary to track and measure not only illicit financial flows themselves, in terms of volume, but also policy efforts to reduce them, both in countries of origin and countries of destination.

74. Finally, it will be necessary to have robust and independent mechanisms to ensure that the commitments made in Addis Ababa and in New York are closely watched, not only by States and bodies of the United Nations, but also by academic experts and civil society.

VII. Conclusions and recommendations

75. **Combating tax abuse, and illicit financial flows more broadly, is essential to make better progress in realizing international human rights obligations. The inclusion of a specific target to reduce illicit financial flows under the Sustainable Development Goals makes clear that curbing such flows is also essential for creating an enabling environment for sustainable development.**

76. **While the Independent Expert applauds that reducing illicit financial flows is mentioned in one of the targets of the Sustainable Development Goals, the target remains broad and vague. Specific measures to operationalize this target are needed to ensure that progress is achieved and that such progress can be tracked and measured.**

77. **In developing his recommendations, the Independent Expert considered previous recommendations by the Special Rapporteur on extreme poverty and by his predecessor, and the recommendations contained in his interim study.[56] He also took note of recommendations made by the High-level Panel on Illicit Financial Flows from Africa, the commitments contained in the Addis Ababa Action Agenda and recommendations by independent expert bodies, such as the Independent Commission**

[56] See A/HRC/25/52, para. 50; A/HRC/26/28, paras. 79-82; and A/HRC/28/60, para. 77.

for the Reform of International Corporate Taxation. To promote accountability, his recommendations are addressed to specific stakeholders.

Recommendations to Member States

78. States should ensure that human rights are respected and advanced in all measures and activities undertaken to curb illicit financial flows.

79. States should actively participate in the global movement towards automatic exchange of tax information, in order to prevent hiding of offshore assets and income streams. Out of consideration for the unique challenges faced by developing countries, and in the spirit of the principle of common but differentiated responsibilities, there should be a fixed transition period during which lower-income countries receive tax information automatically without a requirement for full reciprocity. This will allow time for their domestic systems to be modified and improved, so that they are able to take full advantage of the benefits of information exchange.

80. States should impose a legal requirement for the public disclosure of beneficial ownership information, in order to eliminate the potential for anonymous ownership of companies, trusts and foundations.

81. States should require transnational businesses to report publicly on a country-by-country basis, in order to expose major misalignments between the distribution of profit and the location of real economic activity. These reports should be made freely available to tax administrations and should be made available to the public within a certain period of filing.

82. States must hold financial institutions to account for their role in facilitating tax evasion. Robust regimes should be put in place for the supervision of financial institutions by financial supervision agencies. Such regimes should require mandatory reporting of transactions that may involve illicit activity. States should ensure that financial and service providers comply with strict due diligence procedures, as laid out, for example, in the Financial Action Task Force recommendations.

83. States should conduct human rights impact assessments of their tax policies, to ensure that they do not have negative impacts abroad. These should be periodic and independently verified, with public participation in defining the risks and potential extraterritorial impacts. Impact assessments should analyse not only the implications for revenue streams, but also the distributive and governance spillover effects of a country's tax regime abroad. If and when negative spillovers are found, impact assessments should trigger policy action including explicit recommendations for responsible parties and clear deadlines for remedies and redress.

84. States should ensure that human rights impacts caused by corporate tax abuse should form part of due diligence required by business actors and addressed in national action plans on business and human rights.

85. States should uphold their commitments in the Addis Ababa Action Agenda and target 17.1 of the Sustainable Development Goals with respect to capacity-building for tax administrations, including through targeted use of ODA. Technical assistance and other forms of support should also be provided, including through South-South cooperation or participation in the Addis Tax Initiative, launched at the third International Conference on Financing for Development.

86. Capacity-building initiatives in other key areas for fighting tax abuse should receive similar support. To curb trade misinvoicing, developed countries should contribute toward the development of a global trade-pricing database that would give customs officials access to global average price of products. Financial and other forms

of assistance should also go toward training and equipment for customs departments, to better detect intentional misinvoicing of trade transactions. Increased support should also go to financial intelligence units to better track illicit outflows and to financial crime units to prosecute them.

87. **States of origin should:**

(a) **Ensure that they have clear and concise laws and regulations that make it illegal to intentionally incorrectly or inaccurately state the price, quantity, quality or other aspect of trade in goods and services in order to move capital or profits to another jurisdiction or to manipulate, evade or avoid any form of taxation, including customs and excise duties;**

(b) **Establish transfer pricing units within their revenue authorities;**

(c) **Require their customs officials to use available databases of information about comparable pricing of world trade in goods to analyse imports and exports and identify transactions that require additional scrutiny;**

(d) **Review their current and prospective double taxation agreements, particularly those in place with jurisdictions that are significant destinations of illicit financial flows, to ensure that they do not provide opportunities for abuse.**

88. **In the long term, the system for taxing a transnational corporation's subsidiaries as separate entities should be replaced by a system of taxing transnational corporations as single and unified firms. Member States should initiate negotiations to draft a United Nations convention to combat abusive tax practices, which should evolve into a convention that would adopt a consolidation and apportionment system for taxing global corporate profits.**

Recommendations to international organizations and international financial institutions

89. **The Committee of Experts on International Cooperation in Tax Matters should be further strengthened and made more inclusive, with increased representation from lower-income countries, so that it can act as global forum for norm setting on tax matters. It should be provided with adequate, non-discretionary funding and resources.**

90. **The IMF and World Bank should publish estimates of the volume and composition of illicit financial flows on an annual basis to monitor progress in implementing target 16.4 of the Sustainable Development Goals on illicit financial flows.**

91. **Progress in reducing illicit financial flows should be tracked within the Sustainable Development Goals framework by a second indicator monitoring policy efforts to curb illicit financial flows by countries of origin and destination. The Financial Secrecy Index could provide an inspiration.**[57]

92. **The Bank of International Settlements should publish its data on international banking assets by country of origin and county of destination.**

93. **Multilateral organizations should develop model provisions to protect whistleblowers that disclose abusive tax practices to address gaps in their protection. Civil society participation should be included in this process.**

[57] See www.financialsecrecyindex.com/.

94. **International human rights mechanisms should pay greater attention to the impacts of illicit financial flows, tax evasion and tax abuses on the enjoyment of human rights. This should include also monitoring the use of public funds in line with obligations contained in international human rights standards.**

Recommendations to non-State actors

95. **Transnational corporations should exercise due diligence in relation to tax evasion and tax avoidance to meet due diligence requirements under the Guiding Principles on Business and Human Rights. Business enterprises should publish the taxes they pay to every State where they operate, as part of their corporate social responsibility reporting.**

96. **The United Nations Global Compact should be strengthened by explicitly recognizing the obligation to pay tax in a fairly manner as a central element of corporate social responsibility. An international code of tax conduct for transnational corporations should be developed and signed by multinational corporations.**

97. **Commercial banks, financial institutions, financial service providers, tax lawyers and accountants should exercise due diligence with their clients and not participate in business activities that have the principal goal of facilitating tax evasion and avoidance undermining the enjoyment of human rights. Industry and profession specific guidelines should be developed to ensure compliance.**

98. **Civil society organizations should continue to play an active role in the monitoring and review process of the Agenda 2030 for Sustainable Development to ensure that progress on target 16.4 is achieved, and that all relevant actors are held to account.**